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FM AMEMBASSY NEW DELHI  
TO RUEHC/SECSTATE WASHDC IMMEDIATE 8694  
INFO RUEHCG/AMCONSUL CHENNAI 5320  
RUEHNEH/AMCONSUL HYDERABAD 1131  
RUEHCI/AMCONSUL KOLKATA 4535  
RUEHBI/AMCONSUL MUMBAI 4351  
RUEHRC/DEPT OF AGRICULTURE WASHDC  
RUCPDOC/DEPT OF COMMERCE WASHDC  
RHEBAAA/DEPT OF ENERGY WASHINGTON DC  
RUEATRS/DEPT OF TREASURY WASHDC  
RHMCSSU/DEPT OF HOMELAND SECURITY WASHINGTON DC  
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RUEAORC/US CUSTOMS AND BORDER PROTECTION WASHDC  
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E.O. 12958: N/A

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SUBJECT: USTR KIRK AND MINISTER SHARMA REACTIVATE TRADE POLICY FORUM

**¶11.** (SBU) Summary. On October 26, United States Trade Representative (USTR) Ambassador Ron Kirk led an interagency delegation to India for the first Trade Policy Forum (TPF) meeting with the GOI since February 2008. Noting the 20 months between TPF meetings, USTR Kirk and Minister of Commerce and Industry Anand Sharma stressed the need to meet more often and for Focus Groups leads to either resolve old disputes or elevate them to Ministers to resolve and focus on areas where they could make progress. The U.S. side proposed a "Framework for Cooperation on Trade and Investment" agreement for possible signing during Prime Minister (PM) Singh's late November visit, which the GOI welcomed. The delegations also discussed possible "deliverables" for the PM visit such as renewal of the bilateral IPR MOU and a Traditional Knowledge Digital Library (TKDL) agreement. USTR Kirk expressed the longer-term objective of creating the conditions so that India becomes one of United States top 10 trading partners, up from its current rank of 18. (Note: While signing the Framework Agreement appears delayed until early 2010, the IPR MOU, an IPR Action Plan, and the TKDL agreement were all signed on the margins of the PM visit.)  
End Summary.

#### Trade Policy Forum Plenary Session

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**¶12.** (SBU) USTR Kirk and Minister Sharma opened the plenary session with praise for the substantive discussions of both delegations during the morning meetings of the five Focus Groups (Tariffs and Non-Tariff Barriers, Investment, Services, Innovation and Creativity, and Agriculture) and their commitments to specific follow-up DVCs and teleconferences. Noting that the last TPF meeting was 20 months ago in February 2008, Minister Sharma urged that both sides resolve not to repeat such gaps. Commerce Secretary Rahul Khullar added that Ministry officials meet with counterparts from the EU, Japan, China and other significant trading partners every two to three months. USTR Kirk said India should become one of the top ten trading partners of the United States; Deputy USTR Demetrios Marantis said both sides should set goals to double two-way trade. (Comment: Neither side discussed the reasons for the 20 month gap, which were multiple, including: the global economic crisis, elections in both countries, the Mumbai terrorist attacks, and the breakdown in Doha negotiations. End comment).

**¶13.** (SBU) After summary presentations by the co-chairs of the five

focus groups (details below), both sides urged quick action based on the results of the meetings. Marantis presented a draft Framework Agreement to provide goals and objectives, structure, and a work plan to the TPF, which the USG hoped could be concluded during the PM visit. Khullar urged both sides to think of what is next, what is on the table, and what is off the table. For issues that have been unresolved for a long time, he pushed both sides to move these to a higher level for action and move on to other issues. USTR Kirk urged everyone to be realistic on what can be accomplished and "solve the solvable." Issues that have been on the table more than seven years should be solved in the next 90 to 120 days or we should move on. Sharma said the GOI would respond to the draft Framework by November 10, to allow both sides time to make minor changes so that it is ready for signing during the PM's visit. He thought they could conclude the IPR and the TKDL agreement in time for the PM's visit. (Comment: He was right on two out of three. Although the GOI largely accepted the USG-proposed Framework Agreement text, it objected to inclusion of labor provisions. In the end, whether because lack of agreement on that issue or because Minister Sharma was not included in the PM's delegation, he informed USTR Kirk on November 17 that the Framework Agreement "was not part of the mutually agreed agenda" for the PM visit. He offered to sign the Framework Agreement and hold a Private Sector Advisory Group meeting in a dedicated visit in the first quarter of 2010. End Comment.)

¶4. (SBU) Below are summaries of the five Focus Group meetings. Focus Groups also plan to exchange detailed minutes with the goal of establishing agreed minutes.

#### Tariffs and Non Tariff Barriers Focus Group

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¶5. (SBU) GOI Co-lead Commerce Joint Secretary Anil Mukim said the key areas of concern for the GOI were: restoration of GSP benefits for certain products, release of bonds for Indian shrimp exporters, accreditation of Indian labs to reduce the time lag and costs for Indian shrimp exporters, the "Buy America" provisions regarding government procurement in the U.S. fiscal stimulus package, specific issues relating to certain Indian companies such as pharmaceutical company Ranbaxy, recognition of herbal products and traditional medicines, and tariffs on pickup trucks, textiles, leather components, and man-made fiber. The U.S. side offered constructive solutions when possible in many areas, offering to provide Indian shrimp importers in the United States with the appropriate U.S. Customs and Border Protection contact to apply for termination of their bonds, agreeing to engage in discussions with India's competent authorities and/or industry associations to resolve the detention without physical examination on shrimp imports, or recommending Ranbaxy engage more directly with the FDA to resolve the data integrity issues. AUSTR Ryckman explained the GSP program, noting that it was not a permanent program and exporting countries have certain responsibilities regarding issues such as child labor and intellectual property rights in order to receive the benefits of it. DAS Vineyard urged India to sign onto the WTO Government Procurement Agreement to become eligible to participate in official U.S. procurements. She also suggested that India participate in the WTO gems and jewelry sectoral negotiation to guarantee duty-free access to the U.S. market for those products.

¶6. (SBU) U.S. Co-lead Department of Commerce (DOC) Deputy Assistant Secretary Holly Vineyard presented issues of importance to the U.S. side including: publishing the procedures for obtaining concessional customs duties and excise taxes for imported life-saving drugs and medical devices (i.e., the "roadmap"); streamlining the procedures and restoring market access for American non-insecticidal boric acid sellers exporting to Indian traders; ending the application of toy-related import documentation requirements being applied incorrectly to hobby products; customs harassment and unfair treatment by Indian Customs of the information and communication technologies (ICT), media, and entertainment industry; standards and certification of cosmetics and tires; India's import policy for re-manufactured goods; and tariffs on several products such as pistachios, chocolates, confectionary, distilled spirits and wines, and motorcycles. In most cases, India offered to provide assistance

if it received specific details, agreed to post the requested information on the Ministry of Commerce's website, or agreed to discuss the issues in future DVCs or meetings. Regarding lifesaving drugs, the GOI said it would report in two weeks about web posting the roadmap. (Note: Industry reported to Commerce DAS Vineyard's office on October 30 that its blocked shipment of radio-controlled hobby aircraft had been released and delivered, marking a quick Focus Group success although the roadmap is not yet posted on the Commerce website. End note.)

#### Investment Focus Group

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¶7. (SBU) In a hastily arranged meeting, Assistant USTR Christine Bliss, Deputy Assistant USTR Claudio Lilienfeld, and EEST Minister Counselor exchanged possible topic areas for the Investment Focus Group (IFG) with Ministry of Finance Joint Secretary Govind Mohan with the goal of working on an agreed-upon agenda before the next meeting. Both sides agreed that this meeting was simply an exchange of views with nothing said locking in either side for the next meeting.

¶8. (SBU) GOI Co-lead J/S Mohan was interested in discussing issues the GOI hears from Indian investors every day, specifically a totalization agreement and the Committee on Foreign Investment in the United States (CFIUS) process, the causes for the lack of interest from American companies in the Indian infrastructure sector, and possibly a discussion of the USG review of its model bilateral investment treaty (BIT) and the effect it will have on our BIT negotiations. The U.S. side agreed that exchanging information

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on the CFIUS program and barriers to investment in infrastructure were possible areas of discussion and added problems with the Indian investment approval process and exchanging best practices for investment promotion as other potential topics for discussion. Bliss added that totalization was being discussed in the services focus group (SFG). Mohan agreed to keep it there provided it will be addressed.

¶9. (SBU) Bliss said the BIT negotiations were complementary but separate from the IFG. Although it was true that the USG was reviewing the model BIT to see if it meets the goals of the Obama Administration, the USG is not expecting to make major revisions. The focus of the revisions has been on national treatment, financial services, and state-owned enterprises although the private sector has pushed for labor and environment issues to be also included in the review. The USG view is that negotiations should begin based on the model text, which is the same message it has shared with other negotiating partners in China, Vietnam, and Mauritius.

#### Services Focus Group

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¶10. (SBU) After attending the IFG, Bliss led the Service Focus Group (SFG) discussion with Commerce Joint Secretary Bharati Sihag. The two sides first discussed progress made on previously submitted agenda items. For the GOI, these included: a Totalization Agreement; potential for a Mutual Recognition Agreement between the Institute of Chartered Accountants of India (ICAI) and the U.S. International Qualifications Appraisal Board (IQAB); the opening of Indian bank branches in the United States and lack of level playing field in the banking sector; entry barriers for Indian companies in broadcasting; and H1B Visa problems faced by Indian companies. For the USG, agenda items included: postal reform; foreign direct investment in retail; insurance and non-news publishing; telecom; the status of the Indian panel of the Working Group on Legal Services and implications of Bar Council of India resolution on the working group; and the Chartered Financial Analysts (CFA) Institute and importance of clear regulatory framework for certification granting bodies.

¶11. (SBU) Following this discussion, the USG and GOI identified health, education, ICT, energy, and environment as areas of potential cooperation and discussed holding seminars on these issues in both countries. To streamline the SFG discussions, the USG

agreed to consult with the U.S. Department of Energy (DOE) and present the Indian side with a paper delineating areas for collaboration in energy and environment by the first week of November. (Note: The USG subsequently submitted a paper for ICT and, based on the results of Secretary Chu's recent visit to India, is planning for a DVC on energy and environmental services in December. End Note.) In addition, the USG and GOI agreed to formulate further specific areas of cooperation, that an ICT services dialogue would be held on the margins of the November 3-5 ICT Working Group meeting in Washington, and that the SFG will hold a digital video conference to continue the general discussion in the third week of November.

#### Innovation and Creativity Focus Group

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**¶12.** (U) The Innovation and Creativity Focus Group, led by Assistant USTR Stanley McCoy and Industry Joint Secretary Gopal Krishna, had amicable and constructive discussions on a wide range of intellectual property rights issues of concern to both sides, including those which have contributed to India's presence on the Priority Watch List. Both sides agreed to move forward on all these issues.

**¶13.** (SBU) USG concerns centered on amendments to the copyright law, optical disc legislation, and patents and data protections. The GOI agreed to a substantive discussion of the draft copyright law after it introduces the amendments to Parliament in November as the GOI is bound by internal regulations not to discuss it beforehand. (Note: The Copyright Bill was on the list as one of 62 bills scheduled to

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be introduced to Parliament, which opened on November 19. End Note.) The GOI, however, assured the USG that the drafts of the copyright amendments considered USG concerns on WIPO Internet Treaties, although the GOI was non-specific on the content. Regarding the draft Optical Disc (OD) legislation, the GOI noted several difficulties it was having including technical, legal, and procedural issues, state government involvement, and other areas. The USG agreed to provide further details and guidance on Source ID code on blank discs, camcording, and related issues via a DVC. Finally, on patent and data protection, the discussion focused primarily on U.S. pharmaceutical company Gilead's rejected patent application for incremental innovations. Both sides agreed that it was advantageous to patent incremental innovation and, in Gilead's case, that appropriate procedures, such as review appeal, under the Indian Patent Act would be followed. Both sides also agreed to discuss this issue in the future, including general discussions on the scope of patentable subject matter, Indian Patent Office decisions on cases under Section 3(d) of the Patent Act, and any future issues that may arise.

**¶14.** (SBU) The GOI raised several issues with the USG including piracy of Indian music and movies, the Google book settlement, the Traditional Knowledge Digital Library (TKDL) access agreement, the misappropriation of the practice of yoga, and the treatment of traditional medicines. On piracy, the GOI offered to provide the USG with a list of websites which are used for piracy of Indian music and films, which the USG agreed to pass on to the appropriate U.S. law enforcement officials. The USG agreed to share with the GOI its views on the Google book settlement case that it submitted to the U.S. court where the case is being tried as the USG has its own concerns about this settlement. Both sides agreed that the TKDL agreement is ready for signing (Note: The signing occurred during the Prime Minister Singh's visit. End note). Regarding patents for the practice of yoga, the USG was able to show that copyrights granted were for yoga-related products like printed material and equipment, which would not interfere with the practice of yoga in India. Finally, the two sides decided that a discussion of traditional medicines was a topic for the SFG.

#### Agriculture Focus Group

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**¶15.** (U) Meeting for the first time, Ministry of Agriculture Additional Secretary Shri Gokul Chandra Pati and USDA

Under-Secretary for Farm and Foreign Agricultural Services Jim Miller led the Agriculture Focus Group (FGA). Both sides agreed on the importance of ongoing communication, and specifically proposed appointing contacts to facilitate the flow of information. Miller and Pati agreed to provide support, whenever necessary, to ensure timely responses to requests. U/S Miller proposed, and Additional Secretary Pati immediately agreed, to hold two FGA meetings per year to discuss the larger agricultural trade issues.

**¶16.** (SBU) The key United States expressed concerns were: the lack of response on the U.S. dairy certification proposal; market access for U.S. pork, poultry, and pet food; U.S. request for data on the avian influenza restrictions and assessment; and high import tariffs for agriculture products. The GOI agreed to hold a DVC on either November 19 or 20 to discuss the U.S. dairy certification proposal and market access issues although the GOI insisted it had already addressed most of the U.S. concerns. At the same time, the GOI would also address the outstanding U.S. request for data on the avian influenza restrictions and risk assessments. (Note: The DVC was held on November 20. Unfortunately, the result of discussions was that the GOI walked back from prior commitments. End note). On high import tariffs, the GOI referred this to the MCI but Secretary Pati agreed to keep the matter "on the radar screen" should it come up later. The GOI agreed to have plant health bilateral discussions in January, 2010, but did not agree to have a general animal health DVC during the first quarter of 2010.

**¶17.** (SBU) The GOI devoted most of their allotted time to discussing the Indian mango program, specifically removing the requirement for USDA Animal and Plant Health Inspection Service (APHIS) inspections

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and the GOI request to have Indian National Plant Protection Office (NPPO) inspectors conduct inspections on mangoes. Although the GOI believed its proposal would be a minor adjustment to the existing work plan, APHIS was clear that inspection by the NPPO is not possible. On the GOI issue of market access for Indian litchis, the FDA reiterated the 3-step process discussed with the Indians at a previous DVC, noting that India is making progress in the first two areas (requesting U.S. Environmental Protection Agency to set a minimum residue level (MRL) for sulfites on litchis and engaging APHIS to deliver Cold Storage Training for litchi exporters scheduled for Spring 2010) and advised the GOI to work collaboratively with the FDA on U.S. labeling for litchis as soon as possible. On grapes and pomegranates, the GOI appeared satisfied to know that its requests for Pest Risk Assessment are currently under review. Finally, the GOI advanced a request to extend recognition of organic certification for third countries who supply organic ingredients to India although it appeared that the GOI did not have a clear understanding of the USDA organic certification program. The Indian Embassy in Washington will submit a written request.

Meet the Press

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**¶18.** (U) Following the conclusion of the TPF, USTR Kirk participated in a press conference with India's leading print and television media, including members of leading foreign outlets. The press conference received wide and positive play in the following day's press. USTR Kirk's remarks focused on the "extraordinary success" in improving the "tone and frankness" of the discussions in the TPF. USTR Kirk emphasized that the United States is "excited and committed" to improving our relationship with India, especially in infrastructure, health care services, education services, information, communications technology, and energy and environmental services. While emphasizing the need for "reciprocal rights," USTR Kirk underscored areas for improvement including India's intellectual property rights regime and the need for opening the investment environment for U.S. businesses in India. On the Doha Round, Kirk emphasized that moving forward must entail providing meaningful market access for both developed and the least developed economics, while reiterating the importance of utilizing multilateral and intensive bilateral talks to achieve this goal.

**¶19.** USTR has not cleared on this cable.

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